

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-FIELDWR-14-00013746
)	
Best Western)	Citation No. C201432920004
)	
Portland, Oregon)	

CITATION AND ORDER

Failure to File Aeronautical Usage Notification

Adopted: April 2, 2014

Released: April 3, 2014

By the Resident Agent, Portland Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation) issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to Best Western in Portland, Oregon. Specifically, Best Western is being cited for failing to notify the Commission before operating a multichannel video programming distributor (MVPD) system with a carrier in the aeronautical radio frequency band, in violation of Section 76.1804 of the Commission's rules (Rules).²

2. Notice of Duty to Comply With Laws: Best Western should take immediate steps to come into compliance and to avoid any recurrence of the misconduct described herein. Best Western also must immediately file FCC Form 321.³ Best Western is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Section 76.1804 of the Rules, it may be subject to civil penalties, including but not limited to substantial monetary fines (forfeitures) and seizure of equipment. Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁴

3. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁵ we also direct Best Western to respond in writing, within thirty (30) calendar days after the release date of this Citation, and signed under penalty of perjury, with descriptions of the specific action(s) taken

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 76.1804.

³ Form 321 is an Aeronautical Frequency Notification Form, which must be submitted electronically via the Cable Operations and Licensing System Website (COALS). See <http://www.fcc.gov/forms>.

⁴ See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*") (emphasis added).

⁵ 47 U.S.C. §§ 154(i), 154(j), 403.

or planned to correct the violation and preclude recurrence of the violation, and also a timeline for completion of any pending corrective action(s).

II. BACKGROUND

4. On February 14, 2014, agents from the Enforcement Bureau's Portland Office conducted an investigation and found Best Western, located at 9901 NE Sandy Blvd., Portland, Oregon, operated a non-cable MVPD system at its facility. The agents also found that the Best Western MVPD system was using aeronautical frequency 121.2625 MHz, but had not filed an FCC Form 321 to notify the Commission of its operation in the aeronautical band.

III. APPLICABLE LAW AND VIOLATIONS

5. The Rules provide that cable and non-cable MVPDs that transmit carriers with certain characteristics within frequency bands of 108-137 MHz and 225-400 MHz must comply with specific technical requirements delineated in the Rules in order to avoid interference to other licensed operations, including aeronautical systems operating in these frequency ranges. In particular, Section 76.610 of the Rules provides that all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108-137 and 225-400 MHz for any purpose, must comply with, among other requirements, Section 76.1804 of the Rules.⁶ Best Western was required to comply with these Rules because the MVPD system at its property in Portland, Oregon, transmits a carrier at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, and carries signals in the 108-137 MHz and 225-400 MHz aeronautical bands.

6. Section 76.1804 of the Rules requires that an "MVPD shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system on any frequency or frequencies in the aeronautical radio frequency bands (108-137 and 225-400 MHz). The notification shall be made on FCC Form 321."⁷ At the time of the investigation, Best Western was using frequency 121.2625 MHz in the aeronautical band, but had not notified the Commission as required. Based on the foregoing evidence, we find that Best Western violated Section 76.1804 of the Rules by failing to notify the Commission of its operations on frequency 121.2625 MHz.

IV. REQUEST FOR INFORMATION

7. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁸ Best Western is directed to describe the steps it has taken or plans to take to come into compliance with the Commission's notification rules, as well as a timeline for any pending corrective actions, within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or an inadequate, incomplete, or misleading response, may subject Best Western to additional sanctions.⁹

⁶ 47 C.F.R. § 76.610.

⁷ 47 C.F.R. § 76.1804.

⁸ 47 U.S.C. §§ 154(i), 154(j), 403.

⁹ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, ¶¶ 23–28 (2002) (imposing \$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to a Letter Inquiry (LOI)); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (imposing \$4,000 forfeiture for failure to respond to an LOI);

V. RESPONDING TO THIS CITATION

8. In addition to the required written information described in paragraphs 3 and 7, Best Western may, if it so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

9. If you would like to arrange a teleconference or personal interview, please contact agent Binh Nguyen at (360) 696-6707. The nearest Commission Field Office is located in Kirkland, Washington. Such teleconference or interview must take place within thirty (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 10, below.

10. All written communications, including the information requested in paragraphs 3 and 7, above, should be provided to the address below.

Binh Nguyen
Federal Communications Commission
Portland Office
P.O. Box 61469
Vancouver, Washington 98666-1469
Re: EB-FIELDWR-14-00013746

11. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

12. Please be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is

BigZoo.Com Corporation, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (imposing \$20,000 forfeiture for failure to respond to a USF LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (imposing \$4,000 forfeiture for failure to respond to an LOI). *See also World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for a non-responsive reply to an LOI); *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600 (Enf. Bur. 2008) (proposing \$11,000 forfeiture for failure to provide complete responses to an LOI).

necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.¹⁰

13. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

14. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.¹¹

15. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VI. FUTURE VIOLATIONS

16. If, after receipt of this Citation, Best Western again violates Sections 76.1804 of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$112,500 for any single act or failure to act.¹² For instance, the Commission could impose separate forfeitures for each day on which its MVPD system fails to notify the Commission. Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.¹³ In addition, violations of the Communications Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,¹⁴ as well as criminal sanctions, including imprisonment.¹⁵

VII. ORDERING CLAUSES

17. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Best Western must provide the written information requested in paragraphs 3 and 7, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at Best Western with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

¹⁰ 47 C.F.R. § 1.17.

¹¹ 47 U.S.C. § 503.

¹² See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

¹³ See paragraph 2, *supra*.

¹⁴ See 47 U.S.C. § 510.

¹⁵ See 47 U.S.C. §§ 401, 501.

18. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Best Western at 9901 NE Sandy Blvd., Portland, Oregon 97220.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Office
Western Region
Enforcement Bureau